Office of Chief Counsel Internal Revenue Service **memorandum**

CC:SB:2:PIT:EFPeduzzi POSTF 120458-06

Via Facsimile, Regular Mail

date: August 22, 2006

to: W. Ricky Stiff

Chief, Excise Tax Program

thru: Tim Torri

Group Manager

thru: Robert Cirilli

Revenue Agent

from: Edward F. Peduzzi, Jr.

Associate Area Counsel (Pittsburgh) (Small Business/Self-Employed)

subject:

This responds to your memo dated September 12, 2005, requesting advice regarding the above captioned entity and received in this office on April 20, 2006. This memorandum should not be cited as precedent.

ISSUE

Whether sis liable for federal excise tax [FET] under I.R.C. § 4081(a)(1)(A), Treas. Reg. §§ 48.4081-1(b), and 48.4081-1(c)(3) on the sale of gallons of butane sold to a marketer known as during the years

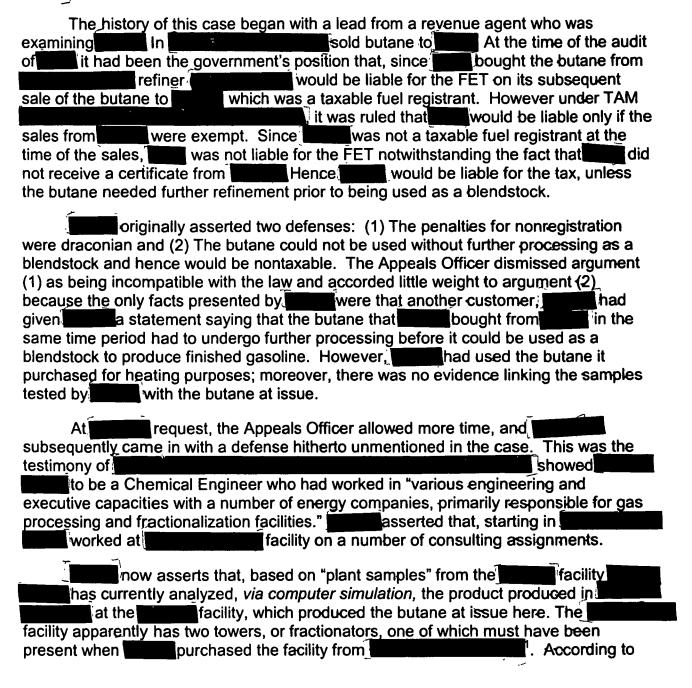
CONCLUSION

It is the opinion of this office that the butane sold by should be considered as a gasoline blendstock and therefore subject to FET under Treas. Reg. § 48.4081-1(c)(3). Under the facts of the case as we understand them, the butane at issue was used to produce finished gasoline by without further processing and thus the exception in Treas. Reg. § 48.4081-1(c)(3)(ii) is not applicable in this case.

PMTA: 00812

FACTS

This case comes to us after the second Appeals consideration and subsequent feedback pursuant to IRM 8.2.1.2.2 for consideration of new matter introduced by at the second Appeals consideration.

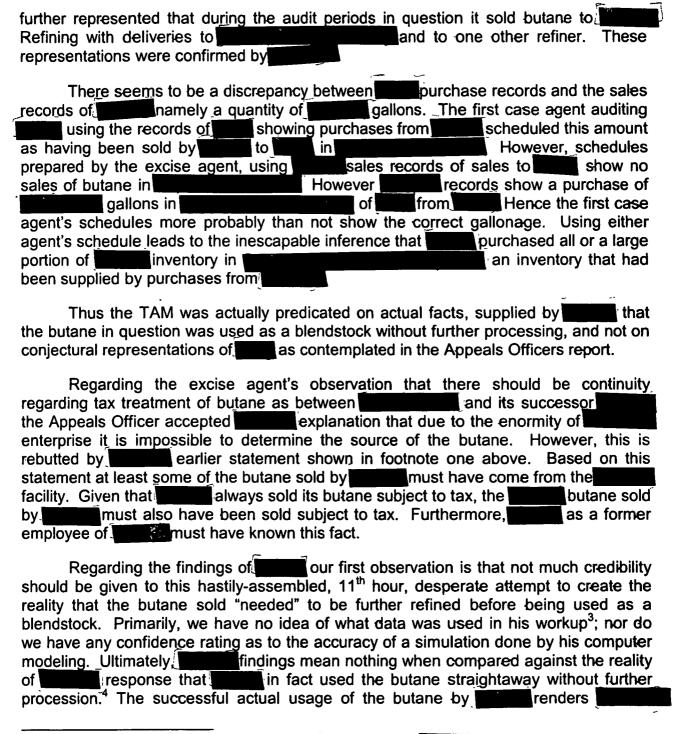


In its protest letter dated October 24, 2002, stated the following: "In the state of the shallow oil business and purchased all of their operations in the counties. With the properties in the was included a gas stripping-plant. This plant is the center of this assessment."

what emerges is a commercial propane product and a "B-G (butane and gasoline) product." According to the B-G product cannot be used as blendstock because of its octane number and its vapor pressure reading --- the gasoline portion has an octane and vapor pressure of and the mixture has a vapor pressure rating states that the octane number is "not suitable for blending" but he does not say why. As to the vapor pressure reading, asserts that both are too high and as such represent too much volatility, and therefore "neither the B-G stream as a whole nor the gasoline stream separately were blendable as a result of their respective vapor pressures." data and findings were sent to the least labs in for confirmation. The lab simply came back to say that without more it could not dispute the simulated analysis. In the administrative file there is a questionnaire sent out to parent of which was in response to the request for more information from Branch 8, P&SI, which had closed its file on the first submission of the TAM due to insufficient information. In the questionnaire was asked about the butane purchased from By response dated affirmed that the butane purchased from was received by the at its refinery in and that the butane was in fact used in the production of finished gasoline and that further processing of the butane was NOT required in order for it to be used in the production of finished gasoline. The questionnaire, the response and the transmittal letter are attached to this opinion. This office recently inquired of as to how much butane it had purchased from was slow in responding because the information data retrieval system that had been replaced in was contained in an old finally replied that it had employed a "vendor" search and had entered However. The result of that search was that, during the time period starting several years before and ending in the year had purchased butane from and in the year and the total gallonage was gallons of butane. gallons of butane to records show that it sold The revenue agent who initially did the audit of indicated in his excise tax lead memo that records showed a purchase of butane from gallons in and gallons in totaling gallons.

² The semployee was not clear exactly when the semployed System was first employed, but opined that it was well before.

Lastly, the excise agent asserts that was an employee of when when would be owned the facilities. When purchased the operation and wells from did not want to be an employee of but rather he insisted that contract with his newly-formed company, to provide services on a consulting basis.
ANALYSIS
The most compelling evidence in this case seems to have been miscomprehended or possibly unnoticed by the Appeals Officer. This is the questionnaire which was sent to and its response as recited above. In his report, the Appeals Officer renders his analysis of the case. In the first portion of his report the analysis is heavily pro-government; after the introduction of the material his analysis becomes decidedly adverse to the government. He ends his analysis by saying: "If the taxpayer can prove that its butane needed further processing then the TAM becomes a moot point since the TAM is based on finding of fact, whether true or not, that the butane needed no further processing."
This ultimate finding by the Appeals Officer is predicated on an apparent misconception regarding the information obtained via the TAM questionnaires. In the pro-government portion of his report, the Appeals Officer had this to say: "I noted that during the processing of the private letter ruling was asked if further processing was involved and the response in total was 'no.' To my knowledge there was no further probing of this aspect and no other information is available."
In the government-adverse section of his report, the Appeals Officer stated:
More importantly now however, is whether the product sold needed further processing before it could be blended. This is a factual determination that is made on the available evidence. The significance of the TAM in this regard is not relevant since it was accepted based on representations of that the purchased butane did not require further processing. As such it is imperative that Compliance now address this issue.
Appeals Transmittal and Case Memo dated April 22, 2005 (emphasis supplied).
In fact, the representations were made by and not by In his report on the resubmission of the TAM the Revenue Agent stated that the butane needed no further processing, and this was based on response to the questionnaire. Thus, in ultimate fact the TAM was then at least partially based on the representations of that the butane needed no processing. Hence, the focus of the TAM was on the 637 registration requirements only and not on the blendstock exception.
Further inquiry by this office of produced confirmation that had indeed purchased gallonage of butane from during the period under consideration. had represented that it had purchased butane from the periods at various times during the periods at issue and had stored the butane at its



In the April 6, 2005, letter from the later of findings are based on "actual plant samples from the facility;" however, it the Appeal's Officer's report it is stated that "The information letter of findings are based on "actual plant samples from the facility;" however, it the Appeal's Officer's report it is stated that "The information letter of findings are based on "actual plant samples from the facility;" however, it the Appeal's Officer's report it is stated that "The information letter of findings are based on "actual plant samples from the facility;" however, it the Appeal's Officer's report it is stated that "The information letter of findings are based on "actual plant samples from the facility;" however, it the Appeal's Officer's report it is stated that "The information letter of facility;" however, it the Appeal's Officer's report it is stated that "The information letter of facility;" however, it the Appeal's Officer's report it is stated that "The information letter of facility;" however, it the Appeal's Officer's report it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility;" however, it is stated that "The information letter of facility is stated that "The informa

⁴ For example, indicates that an octane rating of is not suitable for blending and that a RVP (vapor pressure) rating of the gasoline portion) or the for the entire product is too high, stating that anything with an RVP over 10.5 cannot be used. However I.R.M. 4.41.1.6.4.1, Exhibit 4.41.1-19, shows the approximate characteristics of n-butane (normal butane) as having a RVP of 52.0 and an octane rating of 92. As to the octane rating the Exhibit shows that straight-run-gasoline has an

theoretical assertion of nonuse as nugatory; the exclusion of Treas. Reg. § 48.4081-1(c)(3)(ii) which states that a taxable gasoline blendstock does not include any product that cannot, without further processing, be used in the production of finished gasoline does not apply in this case.

DISCLOSURE ASPECTS

This office has been in informal consultation with Attorney Donald Squires of the Disclosure and Privacy Law Section of the Chief Counsel Procedure and Administration Branch. This consultation has established four points:

(1) Usage of the questionnaire and response from by virtue of the fact that these documents were found in the admin file, can be used for purposes of this opinion and for further use by the Excise Tax Division and the Appeals Division. There is also no prohibition under I.R.C. §§ 6103 or 6110 from disclosing the descriptions.
(2) This office's contacting for additional information did not violate I.R.C. § 6103;
Officer on this case, due to the change in circumstances required in switching the point of taxation from this case, due to inform that it was, in fact, without violation of I.R.C. §§ 6110 or 6013; and
(4). Care must be taken however, in light of these code sections, that the Service does not directly disclose to the the identity of the as being the taken the identity of the section as being the papers as described in paragraph (1) of this section, since that is all transactional information excepted by I.R.C. § 6103(h)(4)(C).

approximate octane rating of 61. The text of the IRM indicates that although this is quite low for finished gasoline, the addition of butane will increase the octane number, and the amount that can be added is regulated by the vapor pressure reading. Thus, and the amount that can be added is numbers seem to be compatible with the butane blendstock characteristics shown in the IRM rather than incompatible, as per his assertion.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office.

If there are any questions concerning the foregoing, please contact the undersigned at 412-644-3435.

Edward F. Peduzzi, Jr. Associate Area Counsel (Pittsburgh) (Small Business/Self-Employed)

Enc: a/s